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Letter dated 22 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report of the Netherlands submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

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Annex

Letter dated 16 August 2006 from the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands addressed to the Chairman of the Counter-Terrorism Committee

I am writing you in your capacity as Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism.

On the instruction of my Government, I have the honour to submit to you the report of the Kingdom of The Netherlands on the implementation of resolution 1624 (2005) (see enclosure). The Netherlands understands and appreciates that this report will be circulated as a document of the Security Council.

I would like to take this opportunity to reiterate the great appreciation of the Netherlands Government for the close cooperation with the Committee and to reaffirm our commitment to providing the Committee with any additional information that it deems necessary or may request.

(*Signed*) Arjan **Hamburger**
Chargé d'affaires a.i.

Enclosure

Implementation of Security Council resolution 1624 (2005)

Response of the Netherlands to the Counter-Terrorism Committee's questions

Paragraph 1

1.1 What measures does the Netherlands have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Since the implementation of the EU Council Framework Decision of 13 June 2002 on combating terrorism, a number of crimes, when committed with terrorist intent, are defined as terrorist offences under the criminal law of the Netherlands. Although there is no specific provision criminalising the incitement of terrorist acts, such incitement can nevertheless be punished on the basis of a more general provision: article 131 of the Criminal Code is a blanket criminalisation of incitement to commit any criminal offence or act of violence against the public authorities; this also covers incitement to terrorist acts. For incitement to occur, the offence or act incited need not actually take place. A person found guilty of incitement is liable to imprisonment for up to five years and/or to a fine. In addition to this, preparations are under way to ratify the 2005 Council of Europe Convention on the Prevention of Terrorism.

Participation in an organisation with terrorist aims is criminalised by article 140a, which was added to the Criminal Code when the Crimes of Terrorism Act entered into force on 10 August 2004. This Act implements the EU Council Framework Decision of 13 June 2002 on combating terrorism. Under the new wording of article 83, terrorist offences include, but are not limited to, 'ordinary' crimes committed with terrorist aims. Article 83a goes on to define the meaning of 'terrorist aims'. Here too, the underlying principle is that mere participation in a criminal (in this case terrorist) organisation is a criminal offence.

Incitement is criminalised by article 131; the possession of inflammatory literature is criminalised by article 132 and the issuing of threats by article 285. Incitement to hatred, discrimination or violence is criminalised by article 137d.

Article 2:20 of the Civil Code makes it possible to ban or dissolve legal persons whose activities are contrary to public policy and/or national security. In addition, legislation is in

preparation to expand the scope under civil law for automatically banning organisations that have been placed on the EU list of terrorist organisations.

1.2 **What measures does the Netherlands take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?**

To begin with, the reader is referred to the response to question 1.1.

To prevent persons with terrorist aims from seeking refuge in this country, the Netherlands has introduced a broad range of measures. As a rule, persons seeking to stay in the country for less than three months must have a valid visa. In addition, these individuals should not pose a danger to public policy or national security. Visa policy of the Netherlands, which is regulated at EU and Schengen level, is explained further in the answer to question 1.3.

Foreign nationals intending to stay in the Netherlands for longer than three months must have a valid residence permit. The Aliens Act of the Netherlands stipulates that aliens who pose a danger to public policy or national security are ineligible for a permit. This determination is made on the basis of an official report by the General Intelligence and Security Service (AIVD), though if the individual in question has been convicted of a criminal offence, the severity of the sentence will also be taken into account.

Also relevant in this context is the Geneva Convention relating to the Status of Refugees. Under article 1F, the provisions of the Convention will not apply to any person with respect to whom there are serious reasons for considering that he or she has committed war crimes, crimes against humanity or other serious offences. Such persons will be deported, provided that their expulsion is not in violation of international treaties, particularly article 3 of the European Convention on Human Rights, under which no one may be deported to a country where he or she runs a real risk of being subjected to inhuman treatment or torture.

The law of the Netherlands also allows for the option of terminating the residence of legal aliens who have committed acts of the type mentioned above. In general, the termination of residency requires a ministerial decision declaring the person an undesirable alien and banning him or her from territory of the Netherlands for a number of years. The purpose of the second step is to prevent the alien from returning to the Netherlands following expulsion. The criteria for terminating an individual's residence and declaring him or her undesirable

depend on the seriousness of the offences committed, the sentence imposed (if any) and the length of time for which he or she was legally resident in the Netherlands.

Paragraph 2

1.3 **How does the Netherlands cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?**

In the Netherlands, the responsibility for border control and immigration falls largely to two organisations:

- ***The Royal Military Constabulary (Koninklijk Marechaussee, KMar)***

The Royal Military Constabulary is a military police force with a national command structure and a variety of tasks, both civil and military. Among other things it is responsible for policing civil aviation and controlling the movement of persons at borders of the Netherlands. In this connection it carries out security surveillance and extra measures at airports for high-risk flights. KMar units are also deployed for special security operations and interventions. The KMar Special Service ensures a continuous flow of information among the intelligence and security services.

- ***The Immigration and Naturalisation Service (IND)***

The Immigration and Naturalisation Service is the agency responsible for implementing aliens law in the Netherlands. It has strengthened various processes as part of the fight against terrorism. Even before 2 November 2004, the day that filmmaker Theo van Gogh was murdered, it had been recognised that more cases should be handled from a counterterrorist perspective. In the light of the current situation the decision has been made to expand the IND's capacity, enabling it to investigate 500 cases per year.

The operational approach recommended by the Counterterrorism Information Centre can lead to action being taken under immigration law. The IND's Special Investigations Section decides how best to apply immigration legislation in the fight against terrorism. This involves using the options offered by the Aliens Act and the Netherlands Nationality Act in order to attain specific results in individual cases. These options include revoking residence permits, refusing to grant residence permits, delaying the issuance of residence permits, expelling

criminal aliens, and declaring an alien undesirable, thereby barring him or her from entering the territory of the Netherlands for a certain period.

In support of border controls, the Netherlands makes use of two databases:

1. the Schengen Information System (SIS) and
2. the national list of wanted and missing persons (OPS).

Individuals can be listed in these systems if:

- they have committed criminal offences and must be deported;
- they should be denied access to the country because there is concrete evidence that they pose a danger to public policy or national security; or
- they should be subjected to targeted or covert monitoring.

The SIS contains data from Schengen countries. The OPS contains national investigation and arrest warrants as well as requests for provisional arrest by non-Schengen countries. For example, a request from the United States for a suspect's arrest and extradition will be included in the OPS by the Netherlands (assuming the request can be granted). In tandem with these other systems, the Netherlands makes active use of Interpol's index of wanted persons. These systems can be consulted when aliens apply for visas or seek to gain access to territory of the Netherlands at a border checkpoint.

On 3 February 2006, a strategy was presented to the Parliament of the Netherlands which will result in improved border controls. This strategy involves stepping up the exchange of information between the agencies in charge of border control, in part by establishing new links between computer systems. Border controls will be coordinated to a greater extent and, wherever practical, carried out by joint forces. Last but not least, the strategy calls for the establishment of a border control forum with participants from the various agencies, a step that will ease cooperation between the executive bodies involved and improve their coherence of action.

The plan of action has three objectives:

to obtain the most comprehensive possible overview of all persons and goods crossing the border

- to identify and maintain the appropriate level of external border control
- to practice targeted surveillance and enforcement by coordinating and – wherever relevant – combining the various elements of the border control process.

An important aspect of this plan is improving information sharing between border control agencies and crime-fighting agencies. Links should be forged which can enable the relevant

agencies to consult and use information in real time to screen persons and goods. This will enable the agencies to check whether a sister agency has relevant information on a particular individual or, for example, the vehicle used by that individual.

The EU Border Management Agency (BMA) is responsible for coordinating operational cooperation between member states in regard to monitoring the movement of persons across the EU's external borders. The BMA's specific focus is the performance of operational tasks, together with day-to-day management and coordination. The agency has, for example, developed what are known as 'focal points' in the member states, i.e. particular locations that receive special attention in the context of border control. In the future, greater uniformity will be required in the way border controls are carried out within Europe. As part of their border control duties, the Royal Military Constabulary and the Seaport Police are increasingly involved in joint operations on the external borders of EU member states.

Another important issue at EU level is the movement to set up a Union-wide database for visa applications, which could contain biometric characteristics. The technical specifications for biometric travel documents have already been adopted.

The increase in the number of EU member states means that both internal and external partners must coordinate their joint security efforts in order to combat illegal immigration, terrorism and organised crime effectively.

To this end, and supplemental to the Schengen Agreement and the Schengen Convention, the following treaties have also been concluded:

1. Prüm Convention (Schengen III)
2. Treaty between the Netherlands and Germany concerning cross-border police and judicial cooperation in criminal matters
3. Benelux agreement concerning policing.

One of the effects of these treaties is that the Royal Military Constabulary has greater scope in performing its duties relating to mobile immigration control on our eastern and southern borders, especially as regards joint patrols. KMar has also been involved in setting up and running a *Bundespolizei*-KMar Joint Border Coordination Centre (GGC) at Goch/Gennep, which has been in operation since 1 February 2006. The purpose of the centre is to simplify the exchange of information, coordinate handovers on the Netherlands-German border, cooperate in the deportation of aliens, coordinate join patrols in the Netherlands-German

border area and support the management of mobile immigration control on the border with Germany. Cooperation on the Netherlands-Belgian border has also been intensified.

Paragraph 3

1.4 **What international efforts is the Netherlands participating in or considering participating in / initiating in order to enhance dialogue and broaden understanding among civilisations in an effort to prevent the indiscriminate targeting of different religions and cultures?**

The Netherlands is a strong supporter of dialogue in multilateral fora which are capable of acting on initiatives. The OSCE is one such forum, and in May 2005 the Netherlands became the first country to host the OSCE's representative on combating intolerance and discrimination against Muslims, Omur Orhun. The activities of the Council of Europe also contribute to the objectives referred to in the question.

With respect to cooperation in the Mediterranean region, the Netherlands sets great store by the Barcelona Process, particularly the Anna Lindh Euro-Mediterranean Foundation for Dialogue between Cultures. The Netherlands is currently considering funding specific Foundation projects.

At bilateral level the Netherlands has increased embassy budgets for the support of projects related to human rights and social transition, with particular emphasis on establishing broad networks which include all possible civil society groups. Other projects receiving backing from the Netherlands involve examining the role of the media or promoting inter-ethnic and inter-religious dialogue. In 2002, to foster intercultural dialogue, the Netherlands created the position of adviser on relations with the Islamic world at the Ministry of Foreign Affairs.

During its EU Presidency in the second half of 2004, the Netherlands convened a ministerial meeting on integration issues. This was followed by the creation of a Forum on Islam, an intergovernmental panel of community representatives which compares approaches and exchanges best practices on engaging Muslim communities.

The Netherlands is also working with other EU member states and international organisations to counter radicalisation by exchanging intelligence and best practices and by cultivating a greater understanding of radicalisation and how it should be tackled. The Netherlands is working with international partners to devise strategies to create a range of

viable alternatives to radicalism. For young people wrestling with questions of faith and identity, there are not enough forces in society speaking out against radical ideas and refuting jihadist messages with lucid arguments. New voices articulating clear and incisive arguments can help young people develop a critical attitude towards jihadism and Salafism. For this reason, it is crucial to strengthen social forces and groups which are working to oppose anti-democratic and anti-Western messages. At the same time answers must be found to the pressing existential questions facing Muslims living in Western societies. The Netherlands is also supporting foreign governments that are working to tackle socioeconomic problems that can lead to radicalisation abroad.

The EU has agreed on a Strategy for Combating Radicalisation and Recruitment to Terrorism. This Strategy includes a detailed Action Plan with almost 70 different actions both at member state and EU level (inside and outside the EU) to combat the structural (i.e. socioeconomic), motivational (i.e. ideological) and facilitational (i.e. opportunities) factors of radicalisation and recruitment to terrorism.

The EU is proceeding with the points listed in this Action Plan as part of a wider EU counterterrorism strategy. An important element of these efforts is the development of an EU communications strategy, including a 'non-emotive lexicon'. The Netherlands is working closely with the Presidency, other EU member states and the European Commission to ensure that this strategy sets the right tone, given the obvious sensitivities and potential for misunderstanding. The strategy is intended to reject the association of any religion with terrorism, improve the understanding and mitigate the sensitivities surrounding certain terms among member states and the media, enhance the quality of dialogue in the EU (among member states, between member states and their communities, and between member states and other communities outside the EU) when discussing terrorism and related issues, focus on the core values of the international community, and challenge the message of violent extremism.

1.5 **What steps is the Netherlands taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?**

Public policy of the Netherlands against radicalisation aims at counteracting and containing tendencies towards violent radicalisation and terrorist recruitment. This policy consists of two pillars: preventive and repressive measures. Preventive measures promote social cohesion

and resistance to radicalisation among vulnerable groups. In more specific terms, preventive measures embrace welfare and integration policies, the enhancement of democracy and political participation, urban development, education and the promotion of cultural diversity. Repressive measures seek to counter radicalisation by taking action against certain individuals, groups or institutions which are instigating radicalisation and recruitment.

Criminal law offers the means to combat the most virulent forms of radicalism, such as acts of violence, threats of violence, incitement to violence, propagation of hatred or other acts committed with the intent to cause social upheaval. Once perpetrators have been convicted, supplementary measures – like revoking the right to vote or run for public office – can also be imposed that will hinder them from carrying on with their activities. The effectiveness of using criminal law against radicalism depends to a large extent on mastering the grey area between behaviour that would constitute a criminal offence and behaviour that is merely deemed to be socially unacceptable. In the Netherlands two counter-strategies are employed in this grey area: tackling hotbeds of radicalisation and conducting person-specific interventions.

Tackling hotbeds of radicalisation

A hotbed of radicalism is an organisation, group or place that serves as a breeding ground for activities and views that are instrumental in radicalising individuals and can ultimately result in terrorist activities. Individual behaviour that may point to the existence of a hotbed of radicalism includes justifying or expressing sympathy for terrorism-related acts or associating with people known to hold radical views. However, a problematic situation may also arise when people do not openly reject violence or when radicals or recruiters are not actively shunned. Hotbeds of radicalism can also serve as an *ideological* breeding ground for extremists. It is therefore necessary for the government to monitor carefully the organisation concerned. Hotbeds of radicalism are identified at national level. Intervention in hotbeds of radicalism involves the coordinated use of existing powers and instruments by central and local government under the direction of the National Coordinator for Counterterrorism. A multidisciplinary analysis is drawn up on the basis of information provided by various public agencies (including the intelligence and security services and police).

Intervening in these hotbeds of radicalisation can involve administrative, financial or communication tools or the options afforded by immigration law. The measures taken can inspire change through various incentives, which may entail not only extra vigilance or sanctions on the authorities' part, but also an approach based on encouraging certain kinds

of behaviour or fostering dialogue. Keeping track of the measures' impact is also part of the process.

To ensure that signs of radicalisation are analysed and followed up at local level, a municipality can appoint an intelligence coordinator or establish an internal hotline. The signs observed by the network partners are then relayed to this information centre, where they are analysed and considered in the light of other information. At this stage the information is simply shared within the centre and no report is sent to the police or the AIVD. Depending on the situation within the municipality it may be decided to record evidence of radicalisation processes, at either a general or individual level. After considering the evidence, the authorities may decide to report the matter to the police or, after consulting the police and enlisting the help of the municipal services, to craft an individual-based approach. Such an approach gives municipalities the option of combating radicalisation by intervening at the level of the individual. An individual-based approach can range from offering educational courses or creating employment to imposing specific sanctions for proven offences. This course of action seems particularly effective in the case of vulnerable individuals and hangers-on. In serious cases of radicalisation, person-specific intervention (see below) is the preferred method.

Person-specific interventions

To counter the activities of individuals who intend to commit terrorist acts or incite others to do so, the Netherlands has developed the instrument of the person-specific intervention. Person-specific interventions aim to prevent the preparation or commission of a terrorist attack by monitoring suspect individuals and their environment in a conspicuous fashion. Such disruption activities make it more difficult for these persons to continue to contribute to or prepare terrorist acts.

The interventions are mainly carried out by local police and may consist of visible surveillance, home visits by a neighbourhood coordinator or community police officer, contact with relatives or neighbours, or a visible presence around a mosque or other meeting place. Periodic evaluations are conducted to determine whether these interventions are still the most appropriate means at the authorities' disposal.

Moreover, a bill concerning administrative measures to protect national security is currently in preparation. The bill would give the Minister of the Interior and Kingdom Relations the power, in consultation with the Minister of Justice, to impose measures restricting the liberty of individuals whose behaviour links them to participation in or support for terrorist activities.

Examples of such measures include exclusion orders, restraining orders and/or reporting requirements. If someone poses a danger to public policy and/or national security, he or she can be denied entry to territory of the Netherlands. Such a decision must be based on an official report by the AIVD.

In the spring of this year, the National Cybercrime Centre (www.meldpuntcybercrime.nl) was launched. This website can be used by anyone, private citizens and public officials alike, to report online manifestations of radicalism or terrorism. Information received by the Centre is analysed by police personnel and, if necessary, sent on to the participating organisations: the police, public prosecution service and the AIVD. For these organisations, reports may be used in ongoing investigations or even lead to the opening of an entirely new investigation. Next year (2007), the Centre will be evaluated and a decision will be made about its future mandate and possible long-term financing.

Paragraph 4

1.6 What is the Netherlands doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?

Counterterrorism policy of the Netherlands and law is based on respect for international law. All legislative measures taken by the Netherlands to combat terrorism are subject to judicial review and comply with the Constitution of the Netherlands and this country's obligations under international law, in particular international human rights law, humanitarian law and refugee law. All enforcement measures taken by the authorities of the Netherlands are prescribed by law and pursue a legitimate aim, while observing the principle of proportionality. Furthermore, these enforcement measures are subject to independent review by both domestic and international courts, such as the European Court of Human Rights. The Netherlands has also adopted the Optional Protocol to the International Covenant on Civil and Political Rights, which recognises the competence of the Human Rights Committee to receive and consider complaints from individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of any of the rights set forth in the Covenant (article 1).